

Kelly J. Garrone  
**McCarter & English, LLP**  
Worldwide Plaza  
825 Eighth Avenue, 31<sup>st</sup> Floor  
New York, New York 10019  
Tel. (212) 609-6800  
[Kgarrone@mccarter.com](mailto:Kgarrone@mccarter.com)

Jeffrey T. Norberg  
**NEAL & McDevitt, LLC**  
1776 Ash Street  
Northfield, Illinois 60093  
Telephone: (847) 441-9100  
[jnorberg@nealmcdevitt.com](mailto:jnorberg@nealmcdevitt.com)  
(*pro hac vice* application forthcoming)

Attorneys for Plaintiff  
Rio Grande Games, Inc.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

RIO GRANDE GAMES, INC.,  
a New Mexico Corporation,  
  
Plaintiff,

v.

PASTEL ENTERPRISES, INC., a New Jersey  
Corporation, PASTEL ENTERPRISES, LLC,  
a New Jersey Limited Liability Company,  
MOSES GROSSMAN, an individual  
JOOPER INCORPORATED, a New York  
Corporation, ADAM JOEL OBERLANDER  
an Individual, BATTERY GIANT, LLC  
a New York Limited Liability Company, and  
KEILE BENEDIKT, an individual  
  
Defendants.

CIVIL ACTION NO.:  
1:18-cv-00409-CBA-VMS

**SWORN DECLARATION OF SCOTT TEPPER**

I, Scott Tepper, being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, declare as follows:

1. Unless otherwise stated, I have personal knowledge of the facts in this Declaration and if called to testify, could and would testify thereto.
2. My name is Scott Tepper and I am employed by Rio Grande Games, Inc. ("Rio Grande Games" or "RGG") as Operations Manager.
3. Rio Grande Games is a game publisher based in New Mexico. One of the games published by Rio Grande Games is the Dominion series of games.
4. Dominion is a card game played by two to four players who compete to build the most valuable deck of cards by playing various types of cards, such as "action," "treasure," "curse," and "victory." Each of these cards features artwork and text unique to the Dominion game.
5. Dominion was originally released in 2008. Since then, Dominion has garnered numerous prestigious gaming awards, including the 2009 Mensa MindGame award, and the 2009 Spiel des Jahres and Deutscher Spiele Preis awards.
6. Since its release, RGG has published numerous versions and expansions of the game, and more than 2.5 million copies of the game have been sold. Dominion is currently in its second edition, and is sold throughout the United States via a number of channels, including independent gaming shops, larger chain retailers, and online retailers such as Amazon.com. The MSRP for Dominion Second Edition is \$44.95.
7. The contents of the game include several decks of cards for playing the game, a molded plastic organizing tray, a paper insert that fits into the organizing tray, a set of printed rules, and a "trash mat" for discarding inactive cards.

8. RGG has expended substantial effort and money in promoting, marketing and selling the Dominion game. RGG manufactures all English language versions of Dominion Second Edition in the United States, using high quality card stock, box materials, and plastic trays that are designed to last.
9. Attached hereto as Exhibits A and B are true and correct copies of United States Trademark Registration Nos. 4,391,795 and 4,337,660, which are owned by Rio Grande Games.
10. Attached hereto as Exhibit C is a true and correct copy of Rio Grande Games' Copyright Registration for Dominion Second Edition.
11. On November 10, 2017 I ordered a copy of Dominion Second Edition from Amazon.com merchant Biggest Giant. During the order process, Amazon.com notified me that the order would be fulfilled by Amazon.com as part of the "Fulfillment By Amazon" program. I received the game later the same day. The game delivered to me in response to this order was counterfeit. Attached hereto as Exhibit D is a true and correct copy of the invoice associated with this order.
12. The fact that the game I received from Biggest Giant is a counterfeit is not readily apparent without removing the shrink wrap packaging from the outside of the Dominion Second Edition box. Once opened, however, there are notable differences between the counterfeit game and authentic games. For example, in authentic copies of the Dominion Second Edition game, the packaging features original artwork with the DOMINION trademark printed on high quality, textured paper. The counterfeit version of the game includes the same artwork and DOMINION trademark and logo, but the colors are not as bright, and the packaging material is glossy rather than

textured. The “trash mat” that is included with the counterfeit game also appears to be a low quality copy of the authentic “trash mat.” The cards that are included with the counterfeit game are printed on lower quality more flexible card stock than the cards included with authentic games, and there are certain visual differences apparent with the print on the counterfeit cards.

13. The plastic organizing tray provided with the counterfeit game is made of a lower quality material than the authentic tray. The counterfeit tray is thinner and more breakable, with pre-existing damage. The plastic tray is one of the more expensive parts of the game to manufacture, and is the only piece of the game that RGG will not replace without replacing the entire game.
14. Attached hereto as Exhibit E are true and correct copies of photographs I took comparing the counterfeits I received from Biggest Giant to an authentic Dominion Second Edition game. In each of the photographs, the authentic version of the game appears on the left, and the counterfeit appears on the right. I have added red circles to the photo of the counterfeit plastic tray to highlight some of the differences between it and the authentic version.
15. I am informed and believe that Amazon.com seller “Biggest Giant” is operated by Battery Giant, LLC, defendant in this litigation. I am also informed and believe that a representative of Battery Giant, LLC contacted outside counsel for Rio Grande Games, and provided our counsel with a copy of an invoice from Rio Grande Games purporting to show that the games sold by Battery Giant, LLC were purchased directly from Rio Grande Games. As described in more detail, below, this invoice is fraudulent, and I believe that it was supplied by Pastel Enterprises.

16. On December 26, 2017 I received a request via the Rio Grande Games website an e-mail from Christopher Baker stating that Mr. Baker had recently purchased a new copy of Dominion Second Edition, noting that the plastic inner tray and organizer inlay were damaged, and requesting a replacement tray and inlay. This type of complaint is unusual for this product, so I followed up with Mr. Baker via a series of e-mails, and Mr. Baker informed me that he had purchased his copy of Dominion Second Edition on November 30, 2017 directly from Amazon.com. Attached hereto as Exhibit F is a true and correct copy of the sales receipt Mr. Baker sent to me via e-mail.
17. I subsequently explained to Mr. Baker that I suspected that he had received a counterfeit copy of Dominion Second Edition, and I sent Mr. Baker a new, authentic version of the game. Mr. Baker then sent me the version of Dominion Second Edition he had received from Amazon.com. Upon receipt, I confirmed that the game he sent me was counterfeit, bearing all of the same indications that it is counterfeit as the copy of Dominion Second Edition I purchased from Biggest Giant.
18. I understand that Amazon.com has provided a sworn declaration that the counterfeit copy of Dominion Second Edition purchased by Mr. Baker was supplied by Amazon.com Marketplace seller "TtoolL." I also understand that the operator of TtoolL contacted Rio Grande Games' counsel, and provided our counsel with an invoice for Dominion Second Edition that was provided by Pastel Enterprises.
19. I have searched Rio Grande Games' records for any record of a sale of Dominion Second Edition to Pastel Enterprises. Rio Grande Games has never shipped any games to Pastel Enterprises. However, in October of 2017, Pastel Enterprises

- contacted me to arrange a purchase of Dominion Second Edition, among other games. Attached hereto as Exhibit G is a true and correct copy of my e-mail exchanges with Pastel Enterprises, which included Mr. Grossman, a defendant in this litigation, last dated October 24, 2017.
20. Although Rio Grande Games has never shipped any Dominion Second Edition games to Pastel Enterprises, I did issue them a *pro forma* invoice for 36 of these games. See, Ex. G. When a customer places an order but does not provide a purchase order number, my general practice is to list on the *pro forma* invoice a reference purchase order number that starts with the initials of the person who contacted me plus the date. In this case, I used "SK 102417" because the person who initially contacted me to purchase these games was Sherwin Ko, and the date of the invoice was October 24, 2107." Pastel Enterprises never paid this invoice, and Rio Grande Games therefore never shipped them any games.
21. Attached hereto as Exhibit H is a true and correct copy of an invoice that I understand was provided by defendant Battery Giant to Rio Grande Games' counsel. I have reviewed this invoice and the records of Rio Grande Games and have determined that this invoice was never issued by Rio Grande Games and is fraudulent.
22. The invoice we issued to Pastel Enterprises is quite similar to the invoice attached as Exhibit H. More specifically, the invoice we provided to Pastel Enterprises was Invoice No. 31810 dated October 24, 2017. The fraudulent invoice provided by defendant Battery Giant was Invoice No. 31870 and dated October 25, 2017. The invoice I provided to Pastel Enterprises references P.O. # SK 102417, whereas the fraudulent invoice provided by Battery Giant references P.O. # SK 102517. As

previously discussed, the purchase order reference in Exhibit G includes "SK" because the Pastel Enterprises employee who first contacted me about this order was Sherwin Ko.

23. I am further informed and believe that, at the time we issued Exhibit G to Pastel Enterprises, Amazon.com had instituted a requirement that any third-party sellers wishing to sell Dominion Second Edition must submit to Amazon.com an invoice or other evidence that the Dominion Second Edition games had been purchased from a legitimate distributor or source.
24. Based on my exchanges with Pastel Enterprises, the similarities between Exhibits G and H, and my understanding of Amazon.com's requirements for third-parties to list Dominion Second Edition, I believe that Pastel Enterprises is likely the source of the fraudulent invoice provided by Battery Giant and attached as Exhibit H.
25. The existence of counterfeit Dominion Second Edition games has caused harm to Rio Grande Games in a number of ways. For example, the counterfeit copies of Dominion Second Edition that I have seen are generally functional as games, but are of significantly lower quality. Also, the typical purchaser of Dominion Second Edition is a consumer who is new to the DOMINION brand. Thus, a consumer who purchases Dominion Second Edition and receives a counterfeit is unlikely to realize that the game is not authentic, and instead believe that Rio Grande Games is a producer of poor quality goods.

I declare under penalty of perjury that the foregoing is true and correct.

**Executed at Chicago, Illinois**

**Dated: January 29, 2018**



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Scott Tepper